



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2022-0745; FRL-10211-02-R9]

Determination of Attainment by the Attainment Date, Clean Data Determination, and Approval of Base Year Emissions Inventory for the Imperial County, California Nonattainment Area for the 2012 Annual Fine Particulate Matter NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Imperial County, California fine particulate matter (PM_{2.5}) nonattainment area (“Imperial PM_{2.5} nonattainment area”) attained the 2012 annual PM_{2.5} national ambient air quality standards (NAAQS or “standard”) by its December 31, 2021 “Moderate” area attainment date. This determination is based upon ambient air quality monitoring data from 2019 through 2021. We are also making a clean data determination (CDD) based on our determination that preliminary air quality monitoring data from 2022 indicate the Imperial PM_{2.5} nonattainment area continues to attain the 2012 annual PM_{2.5} NAAQS. As a result of this CDD, certain Clean Air Act (CAA) requirements that apply to the Imperial County Air Pollution Control District (ICAPCD or “District”) are suspended for so long as the area continues to meet the 2012 annual PM_{2.5} NAAQS. The area remains nonattainment for the 2012 annual PM_{2.5} NAAQS until the area is redesignated to attainment. The EPA is also approving a revision to California’s state implementation plan (SIP) consisting of the 2012 base year emissions inventory for the Imperial PM_{2.5} nonattainment area, submitted by the California Air Resources Board (CARB or “State”) on July 18, 2018.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0745. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3964, or by email at vagenas.ginger@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Summary of the Proposed Action

For the reasons discussed in the proposed rulemaking, the EPA proposed to determine that the Imperial PM_{2.5} nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its December 31, 2021 attainment date. We explained that, if finalized, this action would fulfill the EPA’s statutory obligation to determine whether the Imperial PM_{2.5} nonattainment area attained the NAAQS by the attainment date.

As provided in 40 CFR section 51.1015, we also proposed a CDD. We noted that if the EPA finalized the proposal, the requirements for this area to submit an attainment demonstration, associated reasonably available control measures (RACM), reasonable further progress (RFP)

plan, contingency measures, and any other SIP revisions related to the attainment of the 2012 annual PM_{2.5} NAAQS, would be suspended so long as the Imperial PM_{2.5} nonattainment area continues to meet the standard. We also explained that a CDD does not constitute a redesignation to attainment, and that the Imperial PM_{2.5} nonattainment area will remain designated nonattainment for the 2012 annual PM_{2.5} NAAQS until such time as the EPA determines, pursuant to sections 107 and 175A of the CAA, that the Imperial PM_{2.5} nonattainment area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan showing that the area will continue to meet the standard for 10 years.

Finally, we proposed to approve the 2012 base year emissions inventory submitted by the State on July 18, 2018, as part of the “Imperial County 2018 Annual Particulate Matter Less Than 2.5 Microns In Diameter State Implementation Plan,” (“Imperial PM_{2.5} Plan”), as meeting the requirements of CAA section 172(c)(3). As authorized in section 110(k)(3) of the Act, the EPA proposed to approve the submitted base year emissions inventory because we believe it fulfills all relevant requirements.

As described in Section I.B of the proposal, the EPA’s May 7, 2018 finding of failure to submit triggered an obligation for the EPA to issue a federal implementation plan (FIP). The District and CARB ultimately fulfilled their obligation to submit a plan, but because the EPA has not issued a final approval of the Imperial PM_{2.5} Plan and because the nonattainment plan requirements continued to apply, our obligation to promulgate a FIP remained in place. We noted that if we finalized the proposed CDD, the District’s and State’s nonattainment planning obligations, except the requirement for a base year emissions inventory and new source review, would be suspended.¹ If, in addition to making a CDD, we were to finalize our proposed approval of the base year emissions inventory, the EPA’s FIP obligation would be suspended until such time as the CDD is rescinded.²

¹ See Section I.D. of the proposed rulemaking.

² On August 26, 2019, the EPA approved ICAPCD’s amended Rule 207, “New and Modified Stationary Source Review” as meeting applicable CAA requirements for New Source Review. 84 FR 44545.

Please see our proposed rulemaking for more information concerning the background for this action and for a more detailed discussion of the rationale for these actions.

II. Public Comment

The public comment period on the proposed rulemaking opened on September 20, 2022, the date of its publication in the *Federal Register*, and closed on November 21, 2022. We received one non-germane public comment, which is posted in the docket for this action.

III. Final Action

For the reasons discussed in detail in the proposed rulemaking and summarized herein, the EPA is taking final action under CAA sections 179(c)(1) and 188(b)(2) to determine that the Imperial PM_{2.5} nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its December 31, 2021 attainment date. This action fulfills the EPA's statutory obligation under CAA sections 179(c)(1) and 188(b)(2) to determine whether the Imperial PM_{2.5} nonattainment area attained the NAAQS by the attainment date.

Preliminary data available in EPA's Air Quality System (AQS) for 2022 (January through June) indicate that the area continues to show concentrations consistent with attainment of the 2012 annual PM_{2.5} standard; therefore, as provided in 40 CFR section 51.1015, we are also finalizing our CDD.³ Consequently, the requirements for this area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other SIP revisions related to the attainment of the 2012 annual PM_{2.5} NAAQS, will be suspended so long as this area continues to meet the standard. This CDD does not constitute a redesignation to attainment. The Imperial PM_{2.5} nonattainment area will remain designated nonattainment for the 2012 annual PM_{2.5} NAAQS until such time as the EPA determines, pursuant to sections 107 and 175A of the CAA, that the Imperial PM_{2.5} nonattainment area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan showing that the area will continue to meet the standard for 10 years.

³ AQS Design Value Report (AMP480), dated December 6, 2022 (User ID: STSAI Report Request ID: 2061805).

We are also approving the Imperial PM_{2.5} Plan's 2012 base year emissions inventory as meeting the requirements of CAA section 172(c)(3). As authorized in section 110(k)(3) of the Act, the EPA is approving the submitted base year emissions inventory based on our determination that it fulfills all relevant requirements.

As described in Section I.B of proposed rulemaking, the EPA's May 7, 2018 finding of failure to submit triggered an obligation for the EPA to issue a FIP. The District and CARB ultimately fulfilled their obligation to submit a plan, but because the EPA had not issued a final approval of the Imperial PM_{2.5} Plan and because the nonattainment plan requirements continued to apply, our obligation to promulgate a FIP remained in place. As a result of this CDD, the District's and State's nonattainment planning obligations, except the requirement for a base year emissions inventory and new source review, are suspended.⁴ In addition, as a result of our approval of the base year emissions inventory and our previous new source review approval, the EPA's FIP obligation will be suspended until such time as the EPA determines that the area has reviolated the PM_{2.5} NAAQS and rescinds the CDD.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action finds that the Imperial PM_{2.5} nonattainment area attained the 2012 PM_{2.5} NAAQS by the applicable attainment date, determines the area has clean data, and approves the base year emissions inventory. Thus, this action does not establish any new information collection burden that has not already been

⁴ See Section I.D. of the proposed rulemaking.

identified and approved in the EPA's information collection request.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The approval of the emissions inventory, the determination that the Imperial PM_{2.5} nonattainment area attained by its attainment date, and the CDD for the 2012 PM_{2.5} NAAQS does not in and of itself create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the states for the purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. There are no tribes affected by this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA’s evaluation of this issue is contained in the section of the preamble to the proposed rule titled “Environmental Justice Considerations.”

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for specific entities and does not directly regulate any entities. The determination of attainment, clean data determination, and emission inventory approval do not in themselves create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by

the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 21, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(593) to read as follows:

§ 52.220 Identification of plan – in part.

* * * * *

(c) * * *

(593) The following plan was submitted on July 18, 2018, by the Governor's designee, as an attachment to a letter dated July 16, 2018.

(i) [Reserved]

(ii) *Additional materials.* (A) Imperial County Air Pollution Control District.

(I) “Imperial County 2018 Annual Particulate Matter Less Than 2.5 Microns In Diameter State Implementation Plan,” adopted April 24, 2018, Chapter 3 (“Emissions Inventory”) excluding:

Table 3-9a (“Direct PM_{2.5} and PM_{2.5} Precursor Emissions by Major Source Category in the Imperial County PM_{2.5} Nonattainment Area, 2019 (Annual)”); Table 3-9b (“Condensable and Filterable PM_{2.5} Emissions by Major Source Category in the Imperial County PM_{2.5}

Nonattainment Area, 2019 (Annual)”); Table 3-10a (“Direct PM_{2.5} and PM_{2.5} Precursor

Emissions by Major Source Category in the Imperial County PM_{2.5} Nonattainment Area, 2021

(Annual)”); Table 3-10b (“Condensable and Filterable PM_{2.5} Emissions by Major Source

Category in the Imperial County PM_{2.5} Nonattainment Area, 2021 (Annual)”); Table 3-11a

(“Direct PM_{2.5} and PM_{2.5} Precursor Emissions by Major Source Category in the Imperial County

PM_{2.5} Nonattainment Area, 2022 (Annual)”); Table 3-11b (“Condensable and Filterable PM_{2.5}

Emissions by Major Source Category in the Imperial County PM_{2.5} Nonattainment Area, 2022

(Annual)”); and Section 3.17 (“Evaluation of Significant Precursors”).

(2) [Reserved]

(B) [Reserved]

3. Section 52.247 is amended by adding paragraph (q) to read as follows:

§ 52.247 Control strategy and regulations: Fine Particle Matter.

* * * * *

(q) *Determination of attainment.* Effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***], the EPA has determined that, based on 2019 to 2021 ambient air quality data, the Imperial County PM_{2.5} nonattainment area has attained the 2012 annual PM_{2.5} NAAQS. Under the provisions of the EPA's PM_{2.5} implementation rule (see 40 CFR 51.1015), this determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment for as long as this area continues to attain the 2012 annual PM_{2.5} NAAQS. If the EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2012 annual PM_{2.5} NAAQS, the corresponding determination of attainment for that area shall be withdrawn.